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Supreme Court of the United States

OCTOBER TERM, 1966

No. 712

JOYCE C. THORPE,

Petitioner,

—v.—

HOUSING AUTHORITY OF THE CITY OF DURHAM.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

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In the

Supreme Court of the United States

October Term, 1966

No. .....

Joyce C. Thorpe,

Petitioner,

—v.—

Housing Authority of the City of Durham.

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF NORTH CAROLINA

Petitioner prays that a writ of certiorari issue to review the judgment of the Supreme Court of North Carolina entered in the above case on May 25, 1966.

Opinions Below

The opinion of the Supreme Court of North Carolina is reported at 148 S. E. 2d 290 (1966) and is set forth in Appendix A, *infra*, pp. 1a-4a. The findings of fact and conclusions of law of the Superior Court of Durham County are unreported and are set forth in Appendix B, *infra*, pp. 5a-10a.

Jurisdiction

The judgment of the Supreme Court of North Carolina was entered on May 25, 1966. The time for filing this petition for writ of certiorari was extended by Mr. Justice

Brennan to and including October 21, 1966. The jurisdiction of this Court is invoked pursuant to 28 U. S. C. §1257 (3), petitioner having asserted below and asserting here deprivation of rights secured by the Constitution and statutes of the United States.

Question Presented

Petitioner, a Negro, and her children have been tenants in a low-income housing project constructed with Federal funds and administered by an agency of the State of North Carolina pursuant to Federal regulations. The day after petitioner was elected as an official in a tenant's organization, the Housing Authority informed her that it was terminating her lease.

Was petitioner denied rights guaranteed by the due process clause of the Fourteenth Amendment and the First and Fifth Amendments of the Constitution of the United States by the public housing authority's refusal to accord her a hearing on the reasons for the eviction?

Constitutional and Statutory Provisions Involved

This petition involves the First, Fifth and Fourteenth Amendments to the Constitution of the United States.

This petition also involves sections of the United States Housing Act, as amended, 42 U. S. C. §§1401 et seq. and portions of the North Carolina Housing Authorities Act, Chapter 157, General Statutes of North Carolina. These provisions are set forth in Appendix C, *infra*, pp. 11a-30a.

Statement

Since November 11, 1964, petitioner and her children have been tenants in McDougald Terrace, a public low-rent housing project owned and operated by the Housing Authority of the City of Durham, North Carolina, under authority of state law and pursuant to a contract with the Federal Government (R. 12).[1]

Under North Carolina law the Housing Authority is a "public body and a body corporate and politic, exercising public powers" (§157-9, Gen. Stat. of North Carolina) and has "all the powers necessary or convenient to carry out and effectuate the purposes and provisions" (*Ibid.*) of the North Carolina Housing Authorities Law (Chapter 157, Article 1, Gen. Stat. of North Carolina). The Authority also has power "to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city," and "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project" (§157-9, Gen. Stat. of North Carolina) (R. 12).

Petitioner has occupied the project under a lease agreement (R. 18-25), whose initial term was from November 11 to November 30, 1964, and which provided that it would thereafter be automatically renewed for successive terms of one month each (R. 18). On August 10, 1965, petitioner was elected president of the Parents' Club, a group composed of tenants of the project (R. 13). The following day,

[1] Following the judgment of the trial court below they have continued to remain in the premises under stays of the eviction order pending appeal.

August 11, 1965, petitioner was notified that her lease would be cancelled effective August 31, 1965, at which time she would have to vacate the premises (R. 25). The Authority gave no reason for the eviction but merely cited the provision of the lease (R. 19) that permitted the landlord to cancel upon fifteen days notice (R. 25). Although petitioner requested a hearing to go into the reasons for her eviction, the request was denied (R. 5-6).

There was no provision in the lease which specifically either granted or denied the Authority the right to evict without cause and hearing. The lease did provide, however, that either party could terminate by giving written notice of such termination fifteen days prior to the last day of the term (R. 19). This provision was construed by the Authority to permit eviction without cause and without a hearing. The lease, prepared by the Housing Authority, further provided that the tenant could be evicted under certain circumstances, including: non-payment of rent (R. 20); exceeding limits on family size or income (R. 22-23); misrepresentations of material facts in the tenant's application (R. 23); and membership in "an organization designated by the Attorney General of the United States as subversive" (R. 24).

On September 18, 1965, the Housing Authority instituted an action of ejectment against petitioner and her three children. The Justice of the Peace Court in Durham Township, on September 20, 1965, ordered defendant and her children evicted from the project upon a showing that the notice of eviction was duly served (R. 8-11). Petitioner appealed to the Superior Court of Durham County where additional evidence was taken in the form of stipulated testimony (R. 11-14).

Petitioner alleged that the ground for her removal was her involvement with the tenants' organizing group (R. 15). The Authority denied this was the reason, but admitted refusing her a hearing prior to the institution of litigation. The Authority offered no proof concerning the reasons for the removal of petitioner and her children and did not explain why the notice to evict was sent out the day after petitioner was elected president of the tenants' group (R. 13-14). On the basis of the stipulations the Superior Court found that the reason for the eviction was not petitioner's activities with the organizing group. The Court went on to find that the Housing Authority had not given her a hearing or a reason for the eviction (R. 5-6),[2] and concluded as a matter of law that the Authority had no duty to give petitioner a hearing or to communicate its reason for terminating the lease; it affirmed the eviction.

Petitioner appealed to the Supreme Court of North Carolina, and on May 25, 1966, that Court affirmed the order to evict. The Supreme Court held that the Authority was under no obligation to conduct a hearing or advise the tenant of its reasons for terminating the lease, since its obligations to its tenants were the same as the obligations of a private landlord to its tenants. The Court cited as authority a 1913 North Carolina decision construing a lease in a suit brought by a private landlord against his tenant for loss of rents. A stay of the eviction order was granted by the Supreme Court of North Carolina pending action by this Court on a petition for writ of certiorari.

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[2] The relevant stipulations were that the Housing Authority gave neither a hearing nor reason for the eviction (R. 12); that petitioner alleged that the reason for the eviction was her participation in the organization of the Parents' Club (R. 13); that the Director of the Housing Authority would testify that whatever the reason, if any, for the eviction it was not her activities in the tenants' group; and that the court could make findings of fact based on these stipulations and petitioner's affidavit (R. 13-14).

How the Federal Questions Were Raised and Decided Below

The question of whether the eviction without cause, explanation, or hearing, of petitioner and her children, tenants in a low-income housing project supported by federal funds and administered by the Authority pursuant to federal regulations, violated rights guaranteed to petitioner and her children by the Federal Constitution and statutes, was raised at the trials in the Justice of the Peace and Superior Courts by affidavit and motion to quash the eviction proceeding (R. 14-18).[2a]

Following the entry of judgment by the Superior Court, petitioner made exceptions to the court's judgment (R. 28-30), and gave notice of appeal (R. 31). Among the assignments of error argued to the North Carolina Supreme Court was the following:

> 4. For that the Court erred in finding as a matter of law that the Housing Authority of the City of Durham did not owe duty to communicate or give the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject. As shown by EXCEPTION #4. (R. 32.)

In its opinion, the Supreme Court held that, "It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease." 148 S. E. 2d 290, at 292 (App., p. 4a). In finding

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[2a] The Motion to Quash stated, in part:

> That the tenant in a Public Housing Project has a *right* to her apartment and a deprivation of that right without a hearing violates due process of law as guaranteed by the 14th Amendment (R. 17).

that the Authority was entitled to bring summary ejection proceedings against petitioner without granting a hearing or stating its reasons for eviction, the Supreme Court of North Carolina necessarily rejected petitioner's federal claims.

REASONS FOR GRANTING THE WRIT

The Question of the Right of Tenants of Public Housing to a Fair Hearing on the Reasons for Eviction Is of National Importance.

Introductory

In recent years there has been a growing awareness of and concern for the legal rights of the poor and the availability of legal services necessary to preserve them. This interest has been stimulated by decisions of this Court,[3] and has been furthered by Federal legislation,[4] national conferences,[5] and, of course, the underlying economic and social factors. The initial focus of this interest was on the rights of criminally accused indigents. More recently, it

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[3] *Brown* v. *Board of Education*, 347 U. S. 483; *Griffin* v. *Illinois*, 351 U. S. 12; and *Gideon* v. *Wainwright*, 372 U. S. 335.

[4] *E.g.*, The Economic Opportunity Act of 1964, 78 Stat. 508, and The Criminal Justice Act of 1964, 78 Stat. 552, 18 U. S. C. §3006A.

[5] *E.g.*, National Conference on Law and Poverty, Washington, D. C., June 23-25, 1965, under the Co-Sponsorship of the Attorney General and the Director of the Office of Economic Opportunity; The Extension of Legal Services to the Poor, Washington, D. C., November 12, 13, 14, 1964, under the Sponsorship of the U. S. Department of Health, Education and Welfare; National Conference on Bail and Criminal Justice, Washington, D. C., May 27-29, 1964 under the Co-Sponsorship of the U. S. Department of Justice and the Vera Foundation.

has shifted to encompass a variety of areas where legal institutions—whether by omission or commission—discriminate against the poor: landlord and tenant relationships, consumer fraud, the relation of the indigent to state administration of public benefits, especially welfare and public housing, family problems, and the absence of legal services for poor clients. See, e.g., *Symposium: Law of the Poor,* 54 Calif. L. Rev. 319-1014 (1966); Bibliography of Selected Readings in Law and Poverty, in Conference Proceedings, *National Conference on Law and Poverty* (1965); Conference Proceedings, *The Extension of Legal Services to the Poor* (1964); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues,* 74 Yale L. J. 1245 (1965); *Poverty, Civil Liberties, and Civil Rights: A Symposium,* 41 New York U. L. Rev. 328 (1966). One result of this concern for the legal rights of the poor has been the establishment of programs by both public and private organizations to give substance and reality to those rights.[6]

Among the wide range of legal questions to which attention is being given, one of the most important is that of the right of indigent persons to public benefits. See Reich, *The New Property,* 73 Yale L. J. 733 (1964); Reich, *Individual Rights and Social Welfare: The Emerging Legal Issues,* 74 Yale L. J. 1245 (1965); Handler, *Controlling Official Behavior in Welfare Administration,* 54 Calif. L. Rev.

[6] Thus, under the Economic Opportunity Act the Federal Government has begun to finance neighborhood legal offices devoted exclusively to providing free legal advice to the poor. Similar services are being provided by private organizations such as Mobilization for Youth in New York City, and the NAACP Legal Defense and Educational Fund, Inc. and the Center for Social Welfare Policy and Law of Columbia University on a nation-wide scale. At the same time, organizations of the poor themselves have arisen in various cities, *e.g.*, the West Side Organization in Chicago, and Rescuers from Poverty in Baltimore, Maryland.

479 (1966); Harvith, *The Constitutionality of Residence Tests for General and Categorical Assistance Programs*, 54 Calif. L. Rev. 567 (1966). One of the key issues in the right to public benefits is the one presented by the present case, *i.e.*, whether the recipients of such benefits can be denied or deprived of them arbitrarily, or whether they are entitled to procedural protections. See, *e.g.*, O'Neill, *Unconstitutional Conditions: Welfare Benefits with Strings Attached*, 54 Calif. L. Rev. 443, 474-478 (1966).

Thus, although this petition raises only a narrow question of what has been called social welfare or poverty law, that question is of substantial public importance since its resolution has ramifications affecting the rights of recipients to all forms of welfare benefits. Moreover, even viewing the case solely as affecting the rights of persons in public housing, the issue is of great importance. According to information supplied by the United States Department of Housing and Urban Development, there are approximately 1,400 local housing authorities with low-rent projects throughout the United States. These authorities have been advised by the United States Public Housing Authority to draw up their tenant leases on a month-to-month basis, and it is the opinion of the Department that the local authorities "perhaps without exception, have followed this recommendation." This practice does permit evictions to be accomplished after the giving of a notice to vacate which does not state the reason therefor."[7] Thus, the lease involved in

[7] This information was supplied in a letter from Mr. Don Hummel, Assistant Secretary for Renewal and Housing Assistance, Department of Housing and Urban Development, in response to an inquiry from one of the attorneys for petitioner. The partial text of the letter follows:

> Concerning item 2, local authorities consistently have been advised to draw their tenant leases on a month-to-month basis.

this case is substantially identical to that used by the hundreds of state and municipal housing authorities administering federally assisted low-income projects. See also, Friedman, *Public Housing and the Poor: An Overview*, 54 Calif. L. Rev. 642, 659-661 (1966).

Thousands of persons reside in these low-income projects, which generally provide the only decent housing available to them because of their poverty.[8] To the poor, therefore, the terms of occupancy in these projects transcend economic discrimination and involve basic notions of dignity and responsibility in a free society:

> The urban slum is one of the greatest social, political, economic, and moral problems facing the United States.

It is our opinion that authorities, perhaps without exception, have followed this recommendation. This practice does permit evictions to be accomplished after the giving of a notice to vacate which does not state the reason therefor. Local authorities recently, however, have been urged that, in a private conference, they should inform any tenants required to vacate of the reasons for such action.

Formerly there was a federal requirement (called the "Gwinn Amendment") intended to exclude from tenancy in a low-rent project any person who was a member of an organization designated as subversive by the Attorney General. This legislation expired approximately ten years ago. Any local authorities which might now have a non-communist or similar oath clause in their leases do so because of their own local policy or possibly requirements of state law or simply because they have neglected to delete from their lease forms obsolete provisions.

[8] The United States Housing Act of 1937 and the North Carolina Housing Authorities Act (see text and notes, *infra*), under which the Housing Authority herein has been established and financed, both make it clear that the expenditure of funds for publicly owned housing is required because of the inability of the private sector to provide decent, safe, and sanitary housing for low-income families. 42 U. S. C. §§1401, 1402; 1415(7) (App. pp. 11a, 12a, 18a-19a); §§157-2, 157-4, 157-9, Gen. Stat. of North Carolina (App. pp. 20a, 21a-22a, 24a).

> One major source of the problem is the lack of housing units for low-income families and the inadequacy of resources now devoted to building more. Another aggravating factor is the increasing separation of the urban slumdweller from place of work or shopping facilities which are moving out from the center of the city. But there are important problems of the slum that have little to do with the quality or location of construction. They concern rather the legal and social organization of slum living. The poor, whether in public or private housing do not share the same legal relations as the rest of the society. While the sanctity and importance of the home is basic to the American ideology and tradition, and important safeguards surrounding the home are written into the Constitution, the poor frequently have no rights of decision over where and under what conditions they live. On such basic questions as length of tenancy, repairs, privacy, admission or acceptance, it appears that there is one law for the middle class and another for the poor. Economic discrimination is reflected not only in geographical divisions, but in legal ones. *Property Rights and the Low-Income Tenant: Law as an Instrument of Social Reconstruction.* Institute for Policy Studies (mimeo) July, 1966.

Since no other decent housing is available, an unbridled power by housing authorities to evict without reason or hearing is punishment of the severest kind, particularly since some housing authorities have promulgated regulations preventing an individual from being considered as a tenant after he has once been evicted from a project. (See, *e.g.*, New York Housing Authority Regulations, 9N1287, §1a(7).)

Indeed, the existence and exercise of such a power is in conflict with the declared policy of the United States Housing Act of 1937 (42 U. S. C. §§1401 et seq.) under which the Housing Authority of Durham, and others throughout the country, was financed (R. 12).[9] The purpose of federally supported low-income housing is set forth in 42 U. S. C. §1401 (App. p. 11a):

> It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent,

[9] Section 157-9, Gen. Stat. of North Carolina, establishes the Housing Authority as a "public body and a body corporate and politic, exercising public powers" necessary to carry out the purposes of the North Carolina Housing Authorities Law (Appendix, pp. 24a, 25a). The Authority has power to manage any housing project owned by the city and, "to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof." (§157-9, Gen. Stat. of North Carolina, App., p. 25a.) Having received Federal financial support and operating pursuant to its contract with the Federal Government (R. 12), the Authority must adopt and promulgate regulations for internal management (such as lease provisions) that are consistent with and reasonably related to the purposes of low-income housing (42 U. S. C. §§1401, 1410 (g) (2) (App., pp. 11a, 17a); Public Housing Administration, Consolidated Annual Contributions Contract, Part I, Sec. 206, Admission Policies, PHA 3010, p. 8 (1964)). The Federal Act further provides that the Federal Public Housing Administration distributing the funds is authorized to lend all municipal Housing Authorities an amount not in excess of 90 percent of the final development cost of the project and also to make annual contributions over a period of years. Congress then appropriates funds to implement the contracts made by the federal agency and the tenants of the project are selected by the municipal authority subject to the loan or subsidy contract with the government. (42 U. S. C. §§1409, 1410 and 1411.)

> safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. * * * It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies.

Certainly, the absolute power conferred on the respondent Authority by the court below to evict without a hearing, and hence for no reason or at the unbridled whim of housing officials, runs directly contrary to the purposes of insuring low-income citizens a decent place to live and of promoting stability and security in the poor families the Act is intended to benefit. *Cf.*, 42 U. S. C. §1402, App., p. 12a. (See, Schorr, *How the Poor Are Housed*, p. 215, "Poverty in America," University of Michigan Press.)

For these reasons, the question presented by this case is no less than whether thousands of persons are able to live at a minimum level of comfort and decency without being denied this right by arbitrary and unexplained actions of public agencies. In addition, the broader question is involved of the right of persons receiving any public welfare benefits to at least a bare minimum of procedural protection before the very necessities for life are taken from them.

Conflict Between the Decisions of This Court and the Judgment Below as to the Right to a Hearing Necessitates Resolution of the Issue by This Court.

The decisions of this Court make it clear that the federal and state governments may not act arbitrarily to deny persons benefits. One obligation imposed upon government is that before it takes adverse action against persons it must conform to certain requirements of due process, the most basic of which is a hearing. In his concurring opinion in *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123, at 171, Mr. Justice Frankfurter described why the due process clause requires a hearing before valuable rights are denied:

> Man being what he is cannot safely be trusted with complete immunity from outward responsibility in depriving others of their rights . . . That a conclusion satisfies one's private conscience does not attest its reliability . . . Secrecy is not congenial to truth-seeking and self-righteousness gives too slender an assurance of rightness.

In cases involving federal employment, even when national security has been involved, this Court has held that administrative action which denies governmental benefits would be approved only when an opportunity to influence the fact-finder and to explain adverse charges is accorded. *Greene* v. *McElroy*, 360 U. S. 474. And, in *Slochower* v. *Board of Education*, 350 U. S. 551, the Court reversed a state administrative determination on Fourteenth Amendment grounds. Although the case is often considered with respect to the assertion of the privilege against self-incrimination, the Court held that summary dismissal with-

out any inquiry when the privilege was claimed was a denial of due process:

> This is not to say that Slochower has a constitutional right to be an associate professor of German at Brooklyn College. The State has broad powers in the selection and discharge of its employees, and it may be that proper inquiry would show Slochower's continued employment to be inconsistent with a real interest of the State. But there has been no such inquiry here. We hold that the summary dismissal of appellant violates due process of law. (350 U. S. at 559.)[10]

See also, *Schware* v. *Board of Bar Examiners*, 353 U. S. 232. In closely analogous cases, involving the expulsion of students from state colleges or high schools, lower federal courts have applied the above principles and required notice and a hearing. *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150 (5th Cir. 1961), *cert. denied*, 368 U. S. 930; *Woods* v. *Wright*, 334 F. 2d 369 (5th Cir. 1964); *Knight* v. *State Board of Education*, 200 F. Supp. 174

[10] Cf., *Interstate Commerce Commission* v. *Louisville and N. R. Co.*, 227 U. S. 88, 91. This Court, replying to the claim that a Commission's order made without substantial supporting evidence was conclusive, declared:

> . . . A finding without evidence is arbitrary and baseless. And if the government's contention is correct, it would mean that the Commission had a power possessed by no other officer, administrative body, or tribunal under our government. It would mean that, where rights depended upon facts, the Commission could disregard all rules of evidence and capriciously make findings by administrative fiat. Such authority, however beneficently exercised in one case, could be injuriously exerted in another, is inconsistent with rational justice, and comes under the Constitution's condemnation of all arbitrary exercise of power.

See also *Southern Railroad Co.* v. *Virginia ex rel. Shirley*, 290 U. S. 190.

(M. D. Tenn. 1961). See also cases collected in Reich, *The New Property,* 73 Yale L. J. 733, 783-84 (1964), and Seavey, *Dismissal of Students: "Due Process,"* 70 Harv. L. Rev. 1406 (1957).[11]

The court below apparently based its holding on the concept that the Housing Authority of the City of Durham has the same status as any private landlord. This position, however, is untenable, since it is clear that government is not immunized from constitutional requirements because it occupies the relationship of landlord. See, *Burton* v. *Wilmington Parking Authority,* 365 U. S. 715; *Smith* v. *Holiday Inns of America,* 336 F. 2d 630 (6th Cir. 1964). As the Court of Appeals for the District of Columbia has said:

> The government as landlord is still the government. It must not act arbitrarily, for, unlike private landlords, it is subject to the requirements of due process of law. Arbitrary action is not due process. *Rudder* v. *United States,* 226 F. 2d 51, 53 (D. C. Cir. 1955).

Thus, for example, a public housing authority could not discriminate on the basis of race. *Detroit Housing Commission* v. *Lewis,* 226 F. 2d 180 (6th Cir. 1955). Nor, it seems, should it be differentiated from government acting in other capacities. It apparently could not bar occupancy

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[11] Similarly, although the due process clause does not require that an alien never admitted to this country be granted a hearing before being excluded, *United States ex rel. Knauff* v. *Shaughnessy,* 338 U. S. 537, 542, once an alien has been admitted to lawful residence in the United States and remains physically present here, it has been held that "although Congress may prescribe conditions for his expulsion and deportation, not even Congress may expel him without allowing him a fair opportunity to be heard." *Kwong Hai Chew* v. *Colding,* 344 U. S. 590, 597-98.

for failure to take an oath that was unconstitutionally vague, *Cramp* v. *Board of Public Instruction*, 368 U. S. 278, 288, or that barred membership in certain organizations, *Wieman* v. *Updegraff*, 344 U. S. 183, 192. Government has been disabled from imposing a religious oath, *Torcaso* v. *Watkins*, 367 U. S. 488; it has been forbidden to condition the affording of benefits on performing acts that violate one's religious principles, *Sherbert* v. *Verner*, 374 U. S. 398; it has been prohibited from requiring a citizen to reveal all organizational affiliations, *Shelton* v. *Tucker*, 364 U. S. 479.[12] Yet, having been denied a hearing, petitioner cannot tell whether she was evicted for reasons that violate the holding of those cases.

The denial of the right to a hearing is even more abhorrent when, as in this case, it raises questions of suppression of the right to speak and associate. Cf. *Shelton* v. *Tucker*, *supra*. On the face of it, petitioner's expulsion following her election as president of a tenants' association warranted exploration at a hearing on whether she was expelled for that reason. Moreover, a provision in

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[12] Nor can the State successfully maintain the position that although the petitioner may have had a right to a hearing, she waived that right by signing a lease with the provision involved herein (R. 19). To require that petitioner insist that her lease specifically contain a provision prohibiting her eviction without hearing or cause if she wishes to retain her constitutional rights is to nullify those rights themselves, especially where the State, as landlord, has all of the bargaining power and the low-income individual, as tenant, has none. A State may not exact the surrender of federal constitutional rights as a price for the opportunity of living in a public housing project or as an exchange for any benefit it has to offer. See *Dixon* v. *Alabama State Board of Education*, 294 F. 2d 150, 156 (5th Cir. 1961), in which the Fifth Circuit held that a state college could not require that students renounce the right to due process upon expulsion as a condition to admittance; see also, *Shelton* v. *Tucker*, 364 U. S. 479; *Frost Trucking Co.* v. *R. R. Com.*, 271 U. S. 583.

the lease barring tenants who belong to "subversive organizations" is patently unconstitutional.[13] See, *Joint Anti-Fascist Refugee Committee* v. *McGrath*, 341 U. S. 123. There is no way of knowing, without a hearing, whether false evidence was considered against this petitioner to the effect that she belonged to such an organization and that she was evicted for such a reason. She has no knowledge of why she was evicted and has had no opportunity to defend against such a false charge, if indeed it was made. This contention is not entirely speculative for it is not uncommon to charge subversive conduct to persons engaged in protest movements of a totally legal and constitutional nature.

Against the foregoing reasons for requiring an adequate hearing and notice of reasons before eviction, the State has proposed no countervailing interest. Certainly, a public housing authority may make regulations reasonably related to the proper management of the projects under its control. However, the rationality of such regulations must be determined in relation to the purposes of the governmental activity involved.

An additional reason for review of the judgment of the court below exists in that a number of state and federal appellate courts have rendered conflicting decisions on the question raised herein. Thus, in addition to the Supreme Court of North Carolina in the present case, the Seventh Circuit and courts in Arizona and Pennsylvania have held

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[13] It should be noted that the ostensible federal statutory authority for this lease provision, the so-called "Gwinn Amendment" (67 Stat. 307, 42 U. S. C. §1411c), expired more than ten years ago. The continued inclusion of a prohibition against members of such organizations raises serious questions as to the validity of the entire lease.

that a governmental agency operating a housing project may act like a private landlord and evict summarily under the terms of a lease.[14] On the other hand, the District of Columbia Circuit, together with courts in New Jersey, California, Wisconsin, and Illinois, have held that even when acting as a landlord the government still must follow due process and hence cannot act arbitrarily.[15] Because of the seriousness and importance of the question presented, it is imperative that this Court review the decision below and resolve these conflicting decisions.

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[14] *Brand* v. *Chicago Housing Authority*, 120 F. 2d 786 (7th Cir. 1941); *Walton* v. *City of Phoenix*, 69 Ariz. 26, 208 P. 2d 309 (1949); *Housing Authority of City of Pittsburgh* v. *Turner*, 201 Pa. Super. 62, 191 A. 2d 869 (Superior Ct. Pa. 1963).

[15] *Rudder* v. *United States*, 226 F. 2d 51 (D. C. Cir. 1955); *Kutcher* v. *Housing Authority of Newark*, 20 N. J. 181, 119 A. 2d 1 (1955); *Housing Authority of Los Angeles* v. *Cordova*, 130 Cal. App. 2d 883, 279 P. 2d 215 (App. Dept., Superior Ct. 1955); *Lawson* v. *Housing Authority of City of Milwaukee*, 270 Wisc. 269, 70 N. W. 2d 605 (1955), *cert. denied*, 350 U. S. 882 (1955); *Chicago Housing Authority* v. *Blackman*, 4 Ill. 2d 319, 122 N. E. 2d 522 (1954). More recently, a district court has enjoined an eviction on a finding that its reason was the activities of the tenant in a tenant's organization. *Holt* v. *Richmond Redevelopment and Housing Authority* (E. D. Va., C. A. No. 4746, Sept. 7, 1966). And in *Williams* v. *City of Ypsilanti* (D. Mich., C. A. No. 28936), a district court has issued a temporary restraining order barring a Michigan housing authority from evicting the plaintiff under a lease provision allowing termination if a woman who is the head of a household has an additional child.

CONCLUSION

For the above reasons, the petition for writ of certiorari should be granted.

Respectfully submitted,

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APPENDIX I

Judgment of the Supreme Court of North Carolina

NORTH CAROLINA SUPREME COURT

SPRING TERM 1966

No. 769—Durham

HOUSING AUTHORITY OF THE CITY OF DURHAM,

—v.—

JOYCE C. THORPE.

Appeal by defendant from Bickett, J., October 1965 Civil Session of Durham.

The plaintiff instituted summary ejectment proceedings before H. L. Townsend, Justice of the Peace, to remove the defendant from Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, in the city of Durham. From a judgment in favor of the plaintiff in the Court of the Justice of the Peace, the defendant appealed to the superior court where the matter was heard *de novo* by the court without a jury. The court made findings of fact, each of which is supported by stipulations or by the evidence in the record. The material facts so found may be summarized as follows:

The plaintiff, a corporation organized and operating under the laws of the State of North Carolina, is the owner of the tract of land known as the McDougald Terrace Housing Project in the city of Durham, which includes Apartment No. 38-G Ridgeway Avenue. On 11 November 1964

the plaintiff and the defendant entered into a lease contract whereby the plaintiff leased to the defendant the said apartment for a term beginning 11 November 1964 and terminating at midnight 30 November 1964. The lease provided that it would be automatically renewed for successive terms of one month each. It further provided that the lease could be terminated by either party by giving to the other written notice of such termination 15 days prior to the last day of the term. There was no provision in the lease requiring the lessor to give to the lessee any reason for its decision to terminate the lease or requiring that any hearing be held by the plaintiff, or by any other person or agency, with respect to such decision.

The defendant occupied the apartment pursuant to the lease. On 12 August 1965 the plaintiff gave, and the defendant received, a written notice that the lease was cancelled effective 31 August 1965 and that at such time the plaintiff would be required to vacate the premises. The plaintiff gave no reason to the defendant for its decision to terminate the lease, advising the defendant that it was not required to do so. The defendant requested a hearing but the plaintiff did not conduct any hearing at which the defendant was present. Whatever may have been the plaintiff's reason for terminating the lease, it was neither that the defendant had engaged in efforts to organize the tenants of McDougald Terrace nor that she was elected president of a group which was organized in McDougald Terrace on 10 August 1965. The defendant refused to vacate the premises.

Upon these findings, the court concluded that the plaintiff terminated the lease as of 31 August 1965; that the occupancy of the premises by the defendant after such

date was wrongful and in violation of the plaintiff's right to possession; that there was no duty upon the plaintiff to give to the defendant any reason for its termination of the lease or to hold any hearing upon the matter; and that the plaintiff was entitled to the possession of the premises and the defendant was in wrongful possession thereof.

The court, therefore, gave judgment that the defendant be removed from the premises, that the plaintiff be put in possession thereof and that the plaintiff have and recover from the defendant $58.00 plus a reasonable rent for the premises from and after 1 November 1965 until the same are vacated, together with the costs of the action. From this judgment the defendant appeals.

M. C. Burt, R. Michael Frank, Jack Greenberg, Sheila Rush, Edward V. Sparer of Counsel for defendant appellant.

Daniel K. Edwards for plaintiff appellee.

Per Curiam. The plaintiff is the owner of the apartment in question. The defendant has no right to occupy it except insofar as such right is conferred upon her by the written lease which she and the plaintiff signed. This lease was terminated in accordance with its express provisions at midnight 31 August 1965. With its termination, all right of the defendant to occupy the plaintiff's property ceased. Since that date the defendant has been and is a trespasser upon the plaintiff's land.

The defendant having gone into possession as tenant of the plaintiff, and having held over without the right to do so after the termination of her tenancy, the plaintiff was entitled to bring summary ejectment proceedings against her to restore the plaintiff to the possession of that which

belongs to it. G.S. 42-26; Murrill v. Palmer, 164 NC 50, 80 SE 55. It is immaterial what may have been the reason for the lessor's unwillingness to continue the relationship of landlord and tenant after the expiration of the term as provided in the lease.

Having continued to occupy the property of the plaintiff without right after 31 August 1965, the defendant, by reason of her continuing trespass, is liable to the plaintiff for damages due to her wrongful retention of its property and for the costs of the action. G.S. 42-32; McGuinn v. McLain, 225 NC 750, 36 SE 2d 377; Lee, North Carolina Law of Landlord and Tenant, § 18.

No Error.

Moore, J., not sitting.

APPENDIX II

Judgment of the Superior Court of Durham County

This cause, coming on to be heard, and being heard before the undersigned, Honorable William Y. Bickett, Judge Presiding at the October Civil Term of Durham County Superior Court, upon plaintiff and defendant having expressly waived trial by jury, and having stipulated and agreed in open Court that this matter be heard without a jury by the Judge, and that the Judge find the facts upon stipulations made and affidavit filed, and render thereon conclusions of law and judgment in the cause; and the Court, after hearing argument of counsel and considering and weighing the stipulations made in this action and the affidavit filed therein, finds facts as follows:

(1) That the Housing Authority of the City of Durham is and was during all of the times involved in this action, and specifically on the 11th of November, 1964, and thereafter to the present date, a corporation organized and operating under and by virtue of the laws of the State of North Carolina—specifically, the Statute known and designated as the Housing Authorities Law of the State of North Carolina;

(2) That during said times, C. S. Oldham was the Executive Director of said Housing Authority of the City of Durham and charged with responsibility for management of the properties of the Housing Authority of the City of Durham located in the City of Durham;

(3) That on the 11th day of November, 1964, and thereafter, continuously until this date, the Housing Authority of the City of Durham was and is the owner of real property known as the McDougald Terrace Housing Project, located in the City of Durham, and specifically a dwelling apartment located in said housing project, designated and known as No. 38-G Ridgeway Avenue;

(4) That on the 11th day of November, 1964, the plaintiff and the defendant entered into and duly executed a lease contract, wherein the Housing Authority of the City of Durham leased to the defendant Apartment No. 38-G Ridgeway Avenue in said McDougald Terrace Project for the term beginning November 11, 1964, and terminating at Midnight November 30, 1964, at a rental of $19.33 for said term, payable in advance on the first day of said term; that said lease contract further provided that the rental for these premises would be based on the current family composition and family income as were represented to the management of the Housing Authority of the City of Durham, and would be in conformance with the approved current rent schedule which had been adopted by the Housing Authority of the City of Durham for the operation of the project; that the lease further provided that the lease would be automatically renewed for successive terms of one month each at a rental of $29.00 a month, provided there was no change in the income or composition of the family and no violation of the terms of the lease; that the lease further provided that the rent should be payable in advance on the first day of each calendar month, and that the lease could be terminated by the tenant by giving to the Housing Authority of the City of Durham notice in writing of such termination fifteen (15) days prior to the last day of the

term, and that management could terminate the lease by giving to the tenant notice in writing of such termination fifteen (15) days prior to the last day of the term; that there was no provision in said lease whereby it was agreed that the Housing Authority of the City of Durham would give the defendant any reason for termination of said lease or that any reason for the termination of said lease was required, and there was no provision in said lease that any hearing should be held by the Housing Authority or any other agency or person with respect to any decision by the Housing Authority of the City of Durham to terminate said lease and to give the defendant notice in writing of such termination, as was provided in the language of the lease;

(5) That the defendant, upon her execution of said lease, entered into and occupied said Apartment No. 38-G Ridgeway Avenue of the McDougald Terrace Project, owned by the Plaintiff, Housing Authority of the City of Durham and does now continue to occupy said dwelling apartment;

(6) That on the 12th day of August, 1965, the plaintiff, Housing Authority of the City of Durham, gave to the defendant, Joyce C. Thorpe, notice in writing as follows: "Your Dwelling Lease provides that the Lease may be cancelled upon fifteen (15) days' written notice. This is to notify you that your Dwelling Lease will be cancelled effective August 31, 1965, at which time you will be required to vacate the premises you now occupy"; and that the defendant duly received said notice to vacate on said date;

(7) That the defendant failed and refused to vacate said premises and continues to occupy same;

(8) That the Housing Authority of the City of Durham duly brought an action in summary ejectment before the Justice of the Peace Court in Durham County, and after hearing before said Court judgment was duly entered, requiring the defendant Joyce C. Thorpe to vacate said premises and ordering any duly constituted officer of Durham County to remove the defendant from said premises;

(9) That the defendant gave notice of appeal to the Superior Court and posted bond, pursuant to the provisions of G. S. 42-34;

(10) That the plaintiff Housing Authority of the City of Durham, acting through C. S. Oldham, its Manager and Executive Director, gave notice to the defendant to vacate said premises not because she had engaged in efforts to organize the tenants of McDougald Terrace, nor because she was elected President of a group organized in McDougald Terrace on August 10, 1965; that these were not the reasons said notice was given and eviction undertaken;

(11) That the plaintiff Housing Authority of the City of Durham gave no reason to the defendant for giving her notice that the lease was being terminated at the end of the term, nor did the plaintiff or any of its agents or employees conduct a hearing at which the defendant was present or invited to be present to inquire into reasons for terminating her lease;

(12) That the defendant did request a hearing on this matter but had no hearing other than that before the Justice of the Peace in this eviction action and in this Court;

(13) That the plaintiff, through its agents and employees, did inform the defendant that the plaintiff was not required to give or assign reasons to the defendant for the termination of her lease, and has not given to her or communicated to her any reason for so doing, other than that they desired to terminate her lease;

WHEREFORE, the Court concludes, as a matter of law, as follows:

(1) That the defendant, during August of 1965, occupied the premises owned by the plaintiff Housing Authority of the City of Durham, known and designated as Apartment No. 38-G Ridgeway Avenue, McDougald Terrace, under and pursuant to the terms and provisions of a lease, whereby she was tenant from month to month;

(2) That by giving the defendant written notice of termination of her lease on the 12th day of August, 1965, the plaintiff effectively terminated the tenancy of the lease of the defendant as of the 31st day of August, 1965;

(3) That the continued occupancy of said premises by the defendant after the 31st day of August, 1965, was without right and was wrongful and against the express direction of the owner of said premises to vacate and in violation of said owner's right to possession of said premises;

(4) That the Housing Authority of the City of Durham did not owe a duty to communicate or give to the defendant any reason for its termination of her lease, nor was it required or had any duty to hold a hearing on said subject;

(5) That the Housing Authority of the City of Durham acted in conformity with and in accordance with the terms and provisions of the lease entered into with the defendant, and the provisions of the laws of the State of North Carolina, in terminating her lease;

(6) That the plaintiff is entitled to the possession of the premises described hereinabove, and that the defendant is in the wrongful possession thereof;

NOW, THEREFORE, IT IS ORDERED, ADJUDGED AND DECREED that the defendant be removed from the said premises known as Apartment No. 38-G Ridgeway Avenue, and the plaintiff put in possession thereof, and that the plaintiff have and recover from the defendant the sum of Fifty-eight and No/100 ($58.00) Dollars, and a further amount, if any, as reasonable rent for said premises from the 1st day of November, 1965, until the premises are vacated by the defendant, and the defendant shall pay the costs to be taxed by the Clerk.

This 26th day of October, 1965.

WILLIAM Y. BICKETT
Judge Presiding.

APPENDIX III

Federal and State Public Housing Statutes

SELECTED PROVISIONS OF THE UNITED STATES HOUSING ACT OF 1937

42 U.S.C. § 1401 et seq.

§ 1401. *Declaration of policy*

It is declared to be the policy of the United States to promote the general welfare of the Nation by employing its funds and credit, as provided in this chapter, to assist the several States and their political subdivisions to alleviate present and recurring unemployment and to remedy the unsafe and insanitary housing conditions and the acute shortage of decent, safe, and sanitary dwellings for families of low income, in urban and rural nonfarm areas, that are injurious to the health, safety, and morals of the citizens of the Nation. In the development of low-rent housing it shall be the policy of the United States to make adequate provision for larger families and for families consisting of elderly persons. It is the policy of the United States to vest in the local public housing agencies the maximum amount of responsibility in the administration of the low-rent housing program, including responsibility for the establishment of rents and eligibility requirements (subject to the approval of the Authority), with due consideration to accomplishing the objectives of this chapter while effecting economies.

§ 1402. *Definitions*

When used in this chapter—

Low-rent housing; eligibility; continued occupancy

(1) The term "low-rent housing" means decent, safe, and sanitary dwellings within the financial reach of families of low income, and developed and administered to promote serviceability, efficiency, economy, and stability, and embraces all necessary appurtenances thereto. The dwellings in low-rent housing shall be available solely for families of low income. Except as otherwise provided in section 1421b of this title, income limits for occupancy and rents shall be fixed by the public housing agency and approved by the Administration after taking into consideration (A) the family size, composition, age, physical handicaps, and other factors which might affect the rent-paying ability of the family, and (B) the economic factors which affect the financial stability and solvency of the project.

(2) The term "families of low income" means families (including elderly and displaced families) who are in the lowest income group and who cannot afford to pay enough to cause private enterprise in their locality or metropolitan area to build an adequate supply of decent, safe, and sanitary dwellings for their use. The term "families" includes families consisting of a single person in the case of elderly families and displaced families, and includes the remaining member of a tenant family. The term "elderly families" means families whose heads (or their spouses), or whose sole members, have attained the age at which an individual may elect to receive an old-age benefit under title II of the Social Security Act, or are under a disability as defined in section 423 of this Title, or are handicapped within the

meaning of section 1701q of Title 12. The term "displaced families" means families displaced by urban renewal or other governmental action, or families whose present or former dwellings are situated in areas determined by the Small Business Administration, subsequent to April 1, 1965, to have been affected by a natural disaster, and which have been extensively damaged or destroyed as the result of such disaster.

Slum

(3) The term "slum" means any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health, or morals.

Slum clearance

(4) The term "slum clearance" means the demolition and removal of buildings from any slum area.

Development; office space for renewal functions

(5) The term "development" means any or all undertakings necessary for planning, land acquisition, demolition, construction, or equipment, in connection with a low-rent housing project. The term "development cost" shall comprise the costs incurred by a public housing agency in such undertakings and their necessary financing (including the payment of carrying charges, but not beyond the point of physical completion), and in otherwise carrying out the development of such project. Construction activity in connection with a low-rent housing project may be confined to the reconstruction, remodeling, or repair of existing buildings. In cases where the public housing agency is also

the local public agency for the purposes of sections 1450–1452, 1453–1455, 1456–1460, and 1462 of this title, or in cases where the public housing agency and the local public agency for purposes of such sections operate under a combined central administrative office staff, an administration building included in a low-rent housing project to provide central administrative office facilities may also include sufficient facilities for the administration of the functions of such local public agency, and in such case, the Administration shall require that an economic rent shall be charged for the facilities in such building which are used for the administration of the functions of sueh local public agency and shall be paid from funds derived from sources other than the low-rent housing projects of such public housing agency.

Administration

(6) The term "administration" means any or all undertakings necessary for management, operation, maintenance, or financing, in connection with a low-rent-housing or slum-clearance project, subsequent to physical completion.

Federal project

(7) The term "Federal project" means any project owned or administered by the Administration.

Acquisition cost

(8) The term "acquisition cost" means the amount prudently required to be expended by a public housing agency in acquiring a low-rent-housing or slum-clearance project.

Non-dwelling facilities

(9) The term "non-dwelling facilities" shall include site development, improvements and facilities located outside building walls (including streets, sidewalks, and sanitary, utility, and other facilities).

Going Federal rate

(10) The term "going Federal rate" means the annual rate of interest (or, if there shall be two or more such rates of interest, the highest thereof) specified in the most recently issued bonds of the Federal Government having a maturity of ten years or more, determined, in the case of loans or annual contributions, respectively, at the date of Presidential approval of the contract pursuant to which such loans or contributions are made: *Provided,* That with respect to any loans or annual contributions made pursuant to a contract approved by the President after the first annual rate has been specified as provided in this proviso, the term "going Federal rate" means the annual rate of interest which the Secretary of the Treasury shall specify as applicable to the six-month period (beginning with the six-month period ending December 31, 1953) during which the contract is approved by the President, which applicable rate for each six-month period shall be determined by the Secretary of the Treasury by estimating the average yield to maturity, on the basis of daily closing market bid quotations or prices during the month of May or the month of November, as the case may be, next preceding such six-month period, on all outstanding marketable obligations of the United States having a maturity date of fifteen or more years from the first day of such month of May or November, and by adjusting such esti-

mated average annual yield to the nearest one-eighth of one per centum: *And provided further,* That for the purposes of this chapter, the going Federal rate shall be deemed to be not less than 2½ per centum.

Public housing agency

(11) The term "public housing agency" means any State, county, municipality, or other governmental entity or public body (excluding the Administration), which is authorized to engage in the development or administration of low-rent housing or slum clearance. The Administration shall enter into contracts for financial assistance with a State or State agency where such State or State agency makes application for such assistance for an eligible project which, under the applicable laws of the State, is to be developed and administered by such State or State agency.

State

(12) The term "State" includes the States of the Union, the District of Columbia, and the Territories, dependencies, and possessions of the United States.

Public Housing Administration

(13) The term "Administration" means the Public Housing Administration.

Initiated

(14) The term "initiated" when used in reference to the date on which a project was initiated refers to the date of the first contract for financial assistance in respect to such project entered into by the Administration and the public housing agency.

§ 1410. *Annual contributions in assistance of low rentals—Authorization*

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Maximum income limits; admission policies

(g) Every contract for annual contributions for any low-rent housing project shall provide that—

(1) the maximum income limits fixed by the public housing agency shall be subject to the prior approval of the Administration and the Administration may require the agency to review and revise such limits if the Administration determines that changed conditions in the locality make such revisions necessary in achieving the purposes of the chapter;

(2) the public housing agency shall adopt and promulgate regulations establishing admission policies which shall give full consideration to its responsibility for the rehousing of displaced families, to the applicant's status as a serviceman or veteran or relationship to a serviceman or veteran or to a disabled serviceman or veteran, and to the applicant's age or disability, housing conditions, urgency of housing need, and source of income: *Provided,* That in establishing such admission policies the public housing agency shall accord to families of low income such priority over single persons as it determines to be necessary to avoid undue hardship; and

(3) the public housing agency shall determine, and so certify to the Administration, that each family in the project was admitted in accordance with duly adopted regulations and approved income limits; and

the public housing agency shall make periodic reexaminations of the incomes of families living in the project and shall require any family whose income has increased beyond the approved maximum income limits for continued occupancy to move from the project unless the public housing agency determines that, due to special circumstances, the family is unable to find decent, safe and sanitary housing within its financial reach although making every reasonable effort to do so, in which event such family may be permitted to remain for the duration of such a situation if it pays an increased rent consistent with such family's increased income.

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§ 1415. *Preservation of low rents*

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Local responsibilities and determinations

(7) In recognition that there should be local determination of the need for low-rent housing to meet needs not being adequately met by private enterprise—

(a) The Administration shall not make any contract with a public housing agency for preliminary loans (all of which shall be repaid out of any moneys which become available to such agency for the development of the projects involved) for surveys and planning in respect to any low-rent housing projects initiated after March 1, 1949, (i) unless the governing body of the locality involved has by resolution approved the application of the public housing agency for such preliminary loan; and (ii) unless the public housing

agency has demonstrated to the satisfaction of the Administration that there is a need for such low-rent housing which is not being met by private enterprise; and

(b) The Administration shall not make any contract for loans (other than preliminary loans) or for annual contributions pursuant to this chapter with respect to any low-rent housing project initiated after March 1, 1949, (i) unless the governing body of the locality involved has entered into an agreement with the public housing agency providing for the local cooperation required by the Administration pursuant to this chapter; (ii) unless the public housing agency has demonstrated to the satisfaction of the Administration that a gap of at least 20 per centum (except in the case of a displaced family or an elderly family) has been left between the upper rental limits for admission to the proposed low-rent housing and the lowest rents at which private enterprise unaided by public subsidy is providing (through new construction and available existing structures) a substantial supply of decent, safe, and sanitary housing toward meeting the need of an adequate volume thereof; and (iii) unless the public housing agency has demonstrated to the satisfaction of the Administration that there is a feasible method for the temporary relocation of the individuals and families displaced from the project site, and that there are or are being provided, in the project area or in other areas not generally less desirable in regard to public utilities and public and commercial facilities and at rents or prices within the financial means of such individuals and families, decent, safe, and sanitary dwellings equal in number to the number of and avail-

able to such individuals and families and reasonably accessible to their places of employment.

* * * * *

NORTH CAROLINA HOUSING AUTHORITIES LAW

§ 157-1 et seq., Gen. Stat. of North Carolina

§ 157-2. *Finding and declaration of necessity.*—It is hereby declared that unsanitary or unsafe dwelling accommodations exist in urban and rural areas throughout the State and that such unsafe or unsanitary conditions arise from overcrowding and concentration of population, the obsolete and poor condition of the buildings, improper planning, excessive land coverage, lack of proper light, air and space, unsanitary design and arrangement, lack of proper sanitary facilities, and the existence of conditions which endanger life or property by fire and other causes; that in such urban and rural areas many persons of low income are forced to reside in unsanitary or unsafe dwelling accommodations; that in such urban and rural areas there is a lack of safe or sanitary dwelling accommodations available to all the inhabitants thereof and that consequently many persons of low income are forced to occupy overcrowded and congested dwelling accommodations; that these conditions cause an increase in and spread of disease and crime and constitute a menace to the health, safety, morals and welfare of the citizens of the State and impair economic values; that these conditions cannot be remedied by the ordinary operation of private enterprise; that the clearance, replanning and reconstruction of such areas and the providing of safe and sanitary dwelling accommodations for persons of low income are public uses and purposes for which public money may be spent and private property acquired; that it is in the public interest

that work on such projects be instituted as soon as possible; and that the necessity for the provisions hereinafter enacted is hereby declared as a matter of legislative determination to be in the public interest.

§ 157-4. *Notice, hearing and creation of authority; cancellation of certificate of incorporation.*—Any twenty-five residents of a city and of the area within ten miles from the territorial boundaries thereof may file a petition with the city clerk setting forth that there is a need for an authority to function in the city and said surrounding area. Upon the filing of such a petition the city clerk shall give notice of the time, place and purposes of a public hearing at which the council will determine the need for an authority in the city and said surrounding area. Such notice shall be given at the city's expense by publishing a notice, at least ten days preceding the day on which the hearing is to be held, in a newspaper having a general circulation in the city and said surrounding area, or, if there be no such newspaper, by posting such notice in at least three public places within the city, at least ten days preceding the day on which the hearing is to be held.

Upon the date fixed for said hearing held upon notice as provided herein, an opportunity to be heard shall be granted to all residents and taxpayers of the city and said surrounding area and to all other interested persons. After such a hearing, the council shall determine:

(1) Whether insanitary or unsafe inhabited dwelling accommodations exist in the city and said surrounding area, and/or

(2) Whether there is a lack of safe or sanitary dwelling accommodations in the city and said surrounding area available for all the inhabitants thereof.

In determining whether dwelling accommodations are unsafe or insanitary, the council shall take into consideration the following: the physical condition and age of the buildings; the degree of overcrowding; the percentage of land coverage; the light and air available to the inhabitants of such dwelling accommodations; the size and arrangement of the rooms; the sanitary facilities; and the extent to which conditions exist in such buildings which endanger life or property by fire or other causes.

If it shall determine that either or both of the above enumerated conditions exist, the council shall adopt a resolution so finding (which need not go into any detail other than the mere finding) and shall cause notice of such determination to be given to the mayor who shall thereupon appoint, as hereinafter provided, five commissioners to act as an authority. Said commission shall be a public body and a body corporate and politic upon the completion of the taking of the following proceedings:

The commissioners shall present to the Secretary of State an application signed by them, which shall set forth (without any detail other than the mere recital):

(1) That a notice has been given and public hearing has been held as aforesaid, that the council made the aforesaid determination after such hearing, and that the mayor has appointed them as commissioners;

(2) The name and official residence of each of the commissioners, together with a certified copy of the appointment evidencing their right to office, the date and place of induction into and taking oath of office, and that they desire the housing authority to become a public body and a body corporate and politic under this article;

(3) The term of office of each of the commissioners;

(4) The name which is proposed for the corporation; and

(5) The location of the principal office of the proposed corporation.

The application shall be subscribed and sworn to by each of said commissioners before an officer authorized by the laws of the State to take and certify oaths, who shall certify upon the application that he personally knows the commissioners and knows them to be the officers as asserted in the application, and that each subscribed and swore thereto in the officer's presence. The Secretary of State shall examine the application and if he finds that the name proposed for the corporation is not identical with that of a person or of any other corporation of this State or so nearly similar as to lead to confusion and uncertainty he shall receive and file it and shall record it in an appropriate book of record in his office.

When the application has been made, filed and recorded, as herein provided, the authority shall constitute a public body and a body corporate and politic under the name proposed in the application; the Secretary of State shall make and issue to the said commissioners a certificate of incorporation pursuant to this article, under the seal of the State, and shall record the same with the application.

If the council, after a hearing as aforesaid, shall determine that neither of the above enumerated conditions exist, it shall adopt a resolution denying the petition. After three months shall have expired from the date of the denial of any such petitions, subsequent petitions may be filed as aforesaid and new hearings and determinations made thereon.

In any suit, action or proceeding involving the validity or enforcement of or relating to any contract of the authority, the authority shall be conclusively deemed to have been established in accordance with the provisions of this article upon proof of the issuance of the aforesaid certificate by the Secretary of State. A copy of such certificate, duly certified by the Secretary of State, shall be admissible in evidence in any such suit, action or proceeding, and shall be conclusive proof of the filing and contents thereof.

The Secretary of State is authorized and empowered to revoke or to cancel a certificate of incorporation previously issued to an authority or housing authority upon filing in his office a petition and resolution of the council and a petition and resolution of the authority and its members requesting such revocation or cancellation and when the Secretary of State is satisfied that no indebtedness has been incurred or property acquired by said housing authority.

§ 157-9. *Powers of authority.*—An authority shall constitute a public body and a body corporate and politic, exercising public powers, and having all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this article, including the following powers in addition to others herein granted:

To investigate into living, dwelling and housing conditions and into the means and methods of improving such conditions; to determine where unsafe, or insanitary dwelling or housing conditions exist; to study and make recommendations concerning the plan of any city or municipality located within its boundaries in relation to the problem of clearing, replanning and reconstruction of areas in which unsafe or insanitary dwelling or housing conditions exist, and the providing of dwelling accommodations for persons

of low income, and to co-operate with any city municipal or regional planning agency; to prepare, carry out and operate housing projects; to provide for the construction, reconstruction, improvement, alteration or repair of any housing project or any part thereof; to take over by purchase, lease or otherwise any housing project located within its boundaries undertaken by any government, or by any city or municipality located in whole or in part within its boundaries; to manage as agent of any city or municipality located in whole or in part within its boundaries any housing project constructed or owned by such city; to act as agent for the federal government in connection with the acquisition, construction, operation and/or management of a housing project or any part thereof; to arrange with any city or municipality located in whole or in part within its boundaries or with a government for the furnishing, planning, replanning, installing, opening or closing of streets, roads, roadways, alleys, sidewalks or other places or facilities or for the acquisition by such city, municipality, or government of property, options or property rights or for the furnishing of property or services in connection with a project; to arrange with the State, its subdivisions and agencies, and any county, city or municipality of the State, to the extent that it is within the scope of each of their respective functions, (i) to cause the services customarily provided by each of them to be rendered for the benefit of such housing authority and/or the occupants of any housing project and (ii) to provide and maintain parks and sewage, water and other facilities adjacent to or in connection with housing projects and (iii) to change the city or municipality map, to plan, replan, zone or rezone any part of the city or municipality; to lease or rent any of the dwelling or other accommodations or any of the

lands, buildings, structures or facilities embraced in any housing project and to establish and revise the rents or charges therefor; to enter upon any building or property in order to conduct investigations or to make surveys or soundings; to purchase, lease, obtain options upon, acquire by gift, grant, bequest, devise, or otherwise any property real or personal or any interest therein from any person, firm, corporation, city, municipality, or government; to acquire by eminent domain any real property, including improvements and fixtures thereon; to sell, exchange, transfer, assign, or pledge any property real or personal or any interest therein to any person, firm, corporation, municipality, city, or government; to own, hold, clear and improve property; to insure or provide for the insurance of the property or operations of the authority against such risks as the authority may deem advisable; to procure insurance or guarantees from a federal government of the payment of any debts or parts thereof secured by mortgages made or held by the authority on any property included in any housing project; to borrow money upon its bonds, notes, debentures or other evidences of indebtedness and to secure the same by pledges of its revenues, and (subject to the limitations hereinafter imposed) by mortgages upon property held or to be held by it, or in any other manner; in connection with any loan, to agree to limitations upon its right to dispose of any housing project or part thereof or to undertake additional housing projects; in connection with any loan by a government, to agree to limitations upon the exercise of any powers conferred upon the authority by this article; to invest any funds held in reserves or sinking funds, or any funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their

control; to sue and be sued; to have a seal and to alter the same at pleasure; to have perpetual succession; to make and execute contracts and other instruments necessary or convenient to the exercise of the powers of the authority; to make and from time to time amend and repeal bylaws, rules and regulations not inconsistent with this article, to carry into effect the powers and purposes of the authority; to conduct examinations and investigations and to hear testimony and take proof under oath at public or private hearings on any matter material for its information; to issue subpoenas requiring the attendance of witnesses or the production of books and papers and to issue commissions for the examination of witnesses who are out of the State or unable to attend before the authority, or excused from attendance; and to make available to such agencies, boards or commissions as are charged with the duty of abating or requiring the correction of nuisances or like conditions, or of demolishing unsafe or insanitary structures within its territorial limits, its findings and recommendations with regard to any building or property where conditions exist which are dangerous to the public health, morals, safety or welfare. Any of the investigations or examinations provided for in this article may be conducted by the authority or by a committee appointed by it, consisting of one or more commissioners, or by counsel, or by an officer or employee specially authorized by the authority to conduct it. Any commissioner, counsel for the authority, or any person designated by it to conduct an investigation or examination shall have power to administer oaths, to take affidavits and issue subpoenas or commissions. An authority may exercise any or all of the powers herein conferred upon it, either generally or with respect to any specific housing project or projects, through

or by an agent or agents which it may designate, including any corporation or corporations which are or shall be formed under the laws of this State, and for such purposes an authority may cause one or more corporations to be formed under the laws of this State or may acquire the capital stock of any corporation or corporations. Any corporate agent, all of the stock of which shall be owned by the authority or its nominee or nominees, may to the extent permitted by law exercise any of the powers conferred upon the authority herein. In addition to all of the other powers herein conferred upon it, an authority may do all things necessary and convenient to carry out the powers expressly given in this article. No provisions with respect to the acquisition, operation or disposition of property by other public bodies shall be applicable to an authority unless the legislature shall specifically so state.

Notwithstanding anything to the contrary contained in this article or in any other provision of law an authority may include in any contract let in connection with a project, stipulations requiring that the contractor and any subcontractors comply with requirements as to minimum wages and maximum hours of labor, and comply with any conditions which the federal government may have attached to its financial aid of the project.

§ 157-29. *Rentals and tenant selection.*—It is hereby declared to be the policy of this State that each housing authority shall manage and operate its housing projects in an efficient manner so as to enable it to fix the rentals for dwelling accommodations at the lowest possible rates consistent with its providing decent, safe and sanitary dwelling accommodations, and that no housing authority shall construct or operate any such project for profit, or

as a source of revenue to the city. To this end an authority shall fix the rentals for dwellings in its projects at no higher rates than it shall find to be necessary in order to produce revenues which (together with all other available monies, revenues, income and receipts of the authority from whatever sources derived) will be sufficient

(1) To pay, as the same become due, the principal and interest on the bonds of the authority;

(2) To meet the cost of, and to provide for, maintaining and operating the projects (including the cost of any insurance) and the administrative expenses of the authority; and

(3) To create (during not less than the six years immediately succeeding its issuance of any bonds) a reserve sufficient to meet the largest principal and interest payment which will be due on such bonds in any one year thereafter and to maintain such reserve.

In the operation or management of housing projects an authority shall at all times observe the following duties with respect to rentals and tenant selection:

(1) It may rent or lease the dwelling accommodations therein only to persons who lack the amount of income which is necessary (as determined by the housing authority undertaking the housing project) to enable them, without financial assistance, to live in decent, safe and sanitary dwellings, without overcrowding;

(2) It may rent or lease the dwelling accommodations only at rentals within the financial reach of such persons;

(3) It may rent or lease to a tenant dwelling accommodations consisting of the number of rooms (but no greater number) which it deems necessary to provide safe and sanitary accommodations to the proposed occupants thereof, without overcrowding; and

(4) It shall not accept any person as a tenant in any housing project if the person or persons who would occupy the dwelling accommodations have an annual net income in excess of five times the annual rental of the quarters to be furnished such person or persons except that in the case of families with three or more minor dependents, such ratio shall not exceed six to one; in computing the rental for this purpose of selecting tenants, there shall be included in the rental the average annual cost (as determined by the authority) to occupants of heat, water, electricity, gas, cooking range and other necessary services or facilities, whether or not the charge for such services and facilities is in fact included in the rental.

Nothing contained in this section shall be construed as limiting the power of an authority to vest in an obligee the right, in the event of a default by the authority, to take possession of a housing project or cause the appointment of a receiver thereof, free from all the restrictions imposed by this section.